IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

WP(C).No. 23880 of 2005(P)

OS.42/1999 of SUB COURT, SULTHAN BATHERY
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PETITIONER:

PUTHENPURAYIL RASHEED,
CONTRACTOR, PURAKKADI AMSOM,
DESOM OF SULTHANBATHERY TALUK.

BY ADV. SRI.B.KRISHNA MANI

RESPONDENT:
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1. P.R.MOHANAN, POOVATHINKAL HOUSE,
RESIDING AT APPAD, PURAKKADI AMSOM,
DESOM OF SULTHANBATHERY TALUK.

2. M.M.MYDHILI, POOVATHINKAL HOUSE,
RESIDING AT APPAD, PURAKKADI AMSOM,
DESOM OF SULTHANBATHERY TALUK.

BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C) No.23880 of 2005

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Dated: 22nd August, 2007

JUDGMENT

Impugned in this Writ Petition under Article 227 of the Constitution is Ext.P5 order passed on Ext.P3 application submitted by the respondents-defendants in a suit for specific performance of a contract for sale which had already been dismissed as withdrawn. Though neither side is able to inform me as to which was the provision of law actually invoked, it appears to me that it was Section 340 of the Crl.P.C. which was invoked by the respondents. Under Section 341 a right of appeal is given to anybody who is aggrieved by the order passed by the court on any application under Section 340. But then in the instant case the court below does not direct initiation of any criminal proceedings against the petitioner. On the contrary what has been done is to enter a finding that the petitioner has committed offence under Section 471 I.P.C. There is no difficulty for me to accept the argument of the counsel for the petitioner that the above finding was far beyond the power of the learned Subordinate Judge. I also find that even though two witnesses, P.Ws.1 and 2 were examined on the side of the respondents and as many as four witnesses were examined on the side of the petitioner, the learned

Subordinate Judge does not make even an endeavour to discuss the evidence so as to give reasons as to why he prefers the evidence adduced by the respondents to that adduced on the side of the petitioner. The learned Subordinate Judge only says in a very general way as follows:

"The evidence and documents would show that the respondent has fraudulently used a fabricated document as a genuine document and obtained an injunction order from this court and thereby committed an offence u/s.471 IPC."

Elsewhere in the order the learned Subordinate Judge has stated as follows:

"Petitioners contended that Ext.A1 is a fabricated document whereas respondent stated that it is a genuine document and the parties signed on the document in his presence. The subsequent beheaviour of the respondent (referring to the petitioner herein) case some doubt on the genuineness of Ext.A1 document. After obtaining the injunction order from the court and after holding the order for a while, he submitted before the court that he is not pressing the suit and the suit was subsequently dismissed as not pressed. There is nothing on record to show that the parties settled the matter out of court."

It is trite that mere doubt and not even suspicion cannot be basis for entering on a finding that a party is guilty of an offence. In the instant case, the learned Subordinate Judge who was only called upon to consider the request for initiation of criminal proceedings against the petitioner on the allegation that a fabricated document has put in evidence has gone to the extent of finding that the respondent-petitioner is guilty of offence as already indicated. The said finding is per se without jurisdiction. I set aside the impugned order and direct the learned Subordinate Judge to pass fresh orders after hearing both sides. I expect that the fresh order to be passed by the learned Subordinate Judge to state reasons as to why he prefers the evidence adduced by the respondents to that adduced on the side of the petitioner. The learned Subordinate Judge will also remember that what he is expected to do on an application under Section 340 is only to find a prima facie case and then leave to the concerned criminal court to decide whether the petitioner is guilty of the offences alleged. The ground regarding the maintainability of the application will also be decided by the learned Subordinate Judge.

The Writ Petition is allowed to the extent indicated above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**